STATE OF MICHIGAN

COURT OF APPEALS

In re NELSON, Minor.

UNPUBLISHED
December 16, 2014

No. 321673
Newaygo Circuit Court
Family Division
LC No. 13-008396-NA

Before: JANSEN, P.J., and TALBOT and SERVITTO, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(g). We affirm.

Respondent argues that the trial court erred in finding a statutory ground for the termination of her parental rights under MCL 712A.19b(3)(g) and in finding that termination of her parental rights was in the minor child's best interests.[1] To terminate parental rights, a trial court must find the existence of a statutory ground for termination in MCL 712A.19b has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). After a trial court has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights if it finds by a preponderance of the evidence "that termination of parental rights is in the child's best interests[.]" MCL 712A.19b(5); see *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). A trial court's factual findings, including a finding that a ground for termination has been established and a finding that termination was in a child's best interests, are reviewed for clear error. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Here, the trial court found that respondent failed to provide proper care and custody for the minor child and that there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time considering the child's age because of respondent's mental challenges, respondent's homelessness, respondent's substance abuse, and respondent's unwillingness to follow the law as evidenced by respondent's repeated acts of

[1] Respondent also argues that the trial court erred in finding a statutory ground for termination under MCL 712A.19b(3)(j), but our review of the record indicates that the trial court only found a ground for termination under MCL 712A.19b(3)(g).

driving on a suspended license. These findings were supported by the evidence. A trial court may rely on a respondent's history of failing to provide proper care and custody in finding that there was no reasonable expectation that the respondent would be able to provide proper care and custody within a reasonable time. *In re Archer*, 277 Mich App 71, 75-76; 744 NW2d 1 (2007).

Regardless, respondent argues on appeal that the trial court erred by relying on MCL 712A.19b(3)(g) because she was not given time or an opportunity to provide the minor child with proper care and custody. In support of this proposition, respondent relies on *In re Newman*, 189 Mich App 61, 63-69; 472 NW2d 38 (1991), where we reversed the trial court's finding that there were statutory grounds for termination in that case because the parents were not given a fair opportunity to provide their children with proper care and custody. In this case, however, respondent was provided with and referred to extensive services. Respondent failed to participate in many of the services and did not demonstrate progress in being able to care for her child and provide her stability. Accordingly, the record does not support a conclusion that respondent was not given a fair opportunity to provide the minor child with proper care and custody, as was the case in *Newman*. The trial court did not clearly err in finding by clear and convincing evidence a statutory ground for termination under MCL 712A.19b(3)(g). MCR 3.977(K); *Trejo Minors*, 462 Mich at 356-357.

The trial court also found that termination of respondent's rights was in the minor child's best interests based on respondent's lack of income and inability to provide for the child and because the minor child would be better off in someone else's care. The record established that respondent lacked any income and that she was unable to provide for the minor child. A trial court may consider a respondent's history when determining a child's best interests. *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009). Also, a trial court may consider the child's well-being while in foster care or the possibility of adoption when determining a child's best interests. *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004).

On appeal, respondent argues that termination was not in the minor child's best interests because the child was bonded to her and because it was in the child's best interests to keep the child together with the child's half-sister. Respondent is correct that the minor child's bond with her weighed against termination in this case. Also, it is generally in the best interests of a child to keep the child with the child's siblings. *In re Olive/Metts Minors*, 297 Mich App 35, 42; 823 NW2d 144 (2012). However, "if keeping the children together is contrary to the best interests of an individual child, the best interests of that child will control." *Id*.

In this case, the trial court addressed the minor child's individual best interests and found that termination was in the child's best interests. The trial court may determine the best interests of the child using evidence from the whole record. *Trejo Minors*, 462 Mich at 353. Here, the trial court did not clearly err in finding that termination of respondent's parental rights was in the minor child's best interests based on respondent's history and the trial court's finding that the child would be better off in foster care or in an adoptive placement. MCR 3.977(K); *Trejo Minors*, 462 Mich at 356-357.

Respondent also raises several unpreserved constitutional issues that we review for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). First, respondent suggests that terminating her rights to the minor child and not in regard to the child's

Native American half-sister reflects unconstitutional racial inequality. The trial court initially took jurisdiction over both the minor child and the child's half-sister. However, it was subsequently revealed that the half-sister was a Native American. The trial court ordered that DHS provide active efforts for reunification of respondent and the half-sister under the federal Indian Child Welfare Act (ICWA), 25 USC 1901 *et seq.*, and Michigan Indian Family Preservation Act (MIFPA), MCL 712B.1 *et seq*. The trial court ordered that the termination proceedings regarding respondent's rights to the minor child continue. Subsequently, respondent's parental rights to the minor child were terminated, but the trial court returned the half-sister to respondent and terminated the court's jurisdiction regarding the half-sister.

Respondent does not provide any authority for the proposition that any disparate treatment in this case was unconstitutional. This argument is thus abandoned. *Houghton v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003). Nevertheless, we point out that the ICWA does not violate the equal protection rights of non-Native Americans. *In re Miller Minors*, 182 Mich App 70, 75-76; 451 NW2d 576 (1990).

Respondent further argues that the minor child and the child's half-sister had a right to and a fundamental liberty interest in being allowed to grow up in the same household and that she (respondent) had a fundamental liberty interest in continuing with an intact family. However, respondent having failed to support these assertions with sufficient argument, or citation of supporting authority, these arguments are wholly abandoned. *Houghton*, 256 Mich App at 339-340. Nevertheless, respondent received substantive and procedural due process regarding the termination of her rights to the minor child. Respondent's constitutional arguments therefore do not reveal any plain error. See, *Duray Dev, LLC v Perrin*, 288 Mich App 143, 150; 792 NW2d 749 (2010).

Affirmed.

/s/ Kathleen Jansen
/s/ Michael J. Talbot
/s/ Deborah A. Servitto